

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

4 SHARON FLOWERS, Civil Action
5 Individually and on No. 11-1235
6 Behalf of All Others
7 Similarly Situated,
8
VS.
9
10 NARF HOU, LLC, also
11 known as Mo's A Place
12 for Steaks and JOHN A.
13 VASSALLO.
14
15 APRIL 24, 2013
16 HOUSTON, TEXAS
17
18

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

17 FOR PLAINTIFFS:

MS. MELISSA MOORE
Moore & Associates
Lyric Center
440 Louisiana Street
Suite 675
Houston, Texas 77002

24 Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 APPEARANCES (CONTINUED) :

2

3 FOR DEFENDANTS:

4

MR. GREGORY ROTA
Ebanks Horne Rota Moos LLP
1301 McKinney
Suite 2700
Houston, Texas 77010

5

6 OFFICIAL COURT REPORTER: MS. STEPHANIE KAY CARLISLE
7 U.S. District Court
8 515 Rusk, Suite 8016
9 Houston, Texas 77002
10 713.250.5157

11

12

13

14

15 * * *

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (April 24, 2013)

3 THE COURT: All right. The settlement conference.

4 Go ahead, please.

09:52:03AM 5 MS. MOORE: Certainly. Your Honor, on behalf of the
6 plaintiffs, we have presented the Court with identical joint
7 motions for approval of settlements. We have -- we are in
8 agreement on every item with the exception of the release
9 language, which I have tagged one being a short form, which is
09:52:21AM 10 a release of only the FLSA claims, which we believe as the
11 plaintiffs, being that this has been certified as a class
12 action can only be released in this lawsuit. It is my
13 understanding from defendants' position that the defendants
14 are requiring full release of any and all claims. And that's
09:52:39AM 15 the... in what I considered long form of Paragraph 13. So --

16 THE COURT: Since it is only going to bind people
17 who opt-in, who then become parties --

18 MS. MOORE: That's correct.

19 THE COURT: -- then why isn't -- why couldn't it
09:52:52AM 20 appropriately extend beyond? It is not like a Rule 23 class
21 action.

22 MS. MOORE: That's correct, Your Honor. Just from
23 past experiences when a class has been certified, and we
24 typically have the class representative attend settlement or
09:53:08AM 25 mediations, it's been our understanding and our belief that

1 they can only settle the FLSA claims --

2 THE COURT: What other claims do the defendants want
3 released as to the opt-in plaintiffs as well?

4 MS. MOORE: Your Honor, if you go over to --

5 THE COURT: I'm looking at Page 5.

6 MS. MOORE: Page 5, the proposed language is: Every
7 possible claim.

8 THE COURT: Arising out of the employment?

9 MS. MOORE: Yes. If you go -- there's two different
09:53:30AM 10 copies, Your Honor. There's a paragraph -- Paragraph 13 which
11 is -- kind of has the standard employment law full release,
12 which is, you know...

13 THE COURT: Uh-huh. That have been brought in the
14 lawsuit.

09:53:42AM 15 MS. MOORE: Well, the only thing that has been
16 brought in the lawsuit --

17 THE COURT: I understand that.

18 MS. MOORE: Right.

19 THE COURT: Okay. And then in the other version...

09:53:51AM 20 MS. MOORE: Is typical language, Your Honor, that --

21 THE COURT: Anything relating to the employment that
22 was brought or could have been brought?

23 MS. MOORE: That's correct.

24 THE COURT: That really requires everybody who is
09:54:06AM 25 opting in to give up any -- any employment dispute that they

1 might have with respect to your client, correct?

2 MR. ROTA: Correct, Your Honor.

3 THE COURT: I'm not going to approve that. I think
4 it goes beyond what I can approve in the context of an FLSA
09:54:28AM 5 settlement.

6 MR. ROTA: Okay.

7 THE COURT: So if you need to go back to your client
8 now and talk to them --

9 MR. ROTA: My client was willing to accept the

09:54:31AM 10 guidance from the Court.

11 THE COURT: That's the only dispute?

12 MS. MOORE: That's the only dispute, Your Honor.

13 THE COURT: Go ahead, then.

14 MS. MOORE: Certainly. Your Honor, this was pled as

09:54:38AM 15 a typical credit violation. We represented after the

16 opt-in -- 14 individuals opted in, including the plaintiff.

17 Following mediation, the parties were able to get the case

18 resolved. And essentially through the settlement, each opt-in

19 is going to be receiving a hundred percent of the difference

09:54:57AM 20 between what they were actually paid, which is 213, and the

21 appropriate minimum wage at the time. Additionally, they are

22 receiving their full amount of overtime and approximately

23 15 percent of liquidated damages. So, they are being fully

24 compensated over a three-year period.

09:55:14AM 25 Additionally, at the time the case was

1 resolved, the attorneys' fees that we had incurred were
2 approximately \$55,000. As a result of the settlement, we are
3 willing to take a total of \$30,000 for attorneys' fees and
4 costs. \$2,601 is cost that the firm incurred, Your Honor.

09:55:30AM 5 All of the opt-in's have approved the settlement. They are in
6 agreement on the amounts, even though it will have to be paid
7 over a period of approximately eight months.

8 The parties were joint in crafting the
9 settlement agreement. With the Court's guidance we were able
09:55:46AM 10 to get the last issue resolved.

11 So we would ask the Court to approve the
12 settlement. And following the Court's approval, we will file
13 the joint motion for approval of settlement, as the Court has
14 asked us to do in the past, with a full copy of the settlement
09:56:00AM 15 agreement under seal and then a redacted version to be filed
16 as an attachment as well.

17 THE COURT: All right. Go ahead.

18 MR. ROTA: Defendants are also asking the Court to
19 approve the settlement.

09:56:13AM 20 THE COURT: Okay. The only question I have about
21 it --

22 MS. MOORE: Yes, Your Honor.

23 THE COURT: -- is the provision for filing it under
24 seal.

09:56:24AM 25 MS. MOORE: Yes, Your Honor.

1 THE COURT: I would not want this filed under seal.
2 You can file a version under seal that has the names and the
3 specific amounts.

4 MS. MOORE: Certainly.

09:56:34AM 5 THE COURT: But you need to file an un -- a version
6 that is -- then you can file the full version under seal.

7 MS. MOORE: Sure.

8 THE COURT: But you need to file without seal a
9 version that shows the facts of the settlement but doesn't
09:56:50AM 10 have the amounts.

11 MS. MOORE: Your Honor, in the past we filed -- I
12 just want to make sure this is okay -- we filed the joint
13 motion for approval of settlement and as an attachment we
14 filed a redacted version and then under seal that particular
09:57:03AM 15 exhibit, which will be under seal, which has the names and the
16 amounts.

17 THE COURT: That would work. With that, I will
18 approve the settlement. I find that it is in the best
19 interest of the parties. I find that it is fair, adequate,
09:57:15AM 20 and reasonable. That it was reached at arm's length after
21 being vigorously disputed and in good faith.

22 And what is the amount of attorneys' fees?

23 MS. MOORE: The amount -- the total, including the
24 cost, is \$30,000.

09:57:27AM 25 THE COURT: Given the relationship to the amount

1 recovered by the class, I find that it, too, is reasonable and
2 I will approve that as well.

3 MS. MOORE: Thank you, Your Honor.

4 THE COURT: Anything else that we need to do today?

09:57:39AM 5 MS. MOORE: Nothing further, Your Honor.

6 THE COURT: Very good. Thank you very much.

7 Let me make sure I am filing the right one --
8 signing -- the release agreement is the one that on Page 5 has
9 a Paragraph 13 that is short.

09:57:59AM 10 MS. MOORE: That's correct. We will file that
11 shortly.

12 THE COURT: I am signing the agreed judgment as
13 well.

14 What's today's interest, Lisa? Not much.

09:58:32AM 15 Thank you. You are excused.

16 MS. MOORE: Your Honor, I think we just need to sign
17 that agreed judgment that you've just signed.

18 THE COURT: Lisa.

19 THE CASE MANAGER: .12 percent.

20 (Proceedings concluded.)

21 * * *

22 Certify that the foregoing is a correct transcript from the
23 record of proceedings in the above-entitled cause, to the best
24 of my ability.

25

//s_____

Stephanie Kay Carlisle
Official Court Reporter

CSR, RPR

10/10/2013
Date

\$	A	bind [1] - 3:16 brought [4] - 4:13, 4:16, 4:22	CSR [1] - 8:25	foregoing [1] - 8:21 form [2] - 3:9, 3:15 full [5] - 3:14, 4:11, 5:22, 6:14, 7:6 fully [1] - 5:23
\$2,601 [1] - 6:4 \$30,000 [2] - 6:3, 7:24 \$55,000 [1] - 6:2	ability [1] - 8:22 able [2] - 5:17, 6:9 above-entitled [1] - 8:22 accept [1] - 5:9 Action [1] - 1:3 action [2] - 3:12, 3:21 Additionally [2] - 5:21, 5:25 adequate [1] - 7:19 agreed [2] - 8:12, 8:17 agreement [5] - 3:8, 6:6, 6:9, 6:15, 8:8 ahead [3] - 3:4, 5:13, 6:17 aided [1] - 1:24 amount [4] - 5:22, 7:22, 7:23, 7:25 amounts [4] - 6:6, 7:3, 7:10, 7:16 APPEARANCES [2] - 1:15, 2:1 appropriate [1] - 5:21 appropriately [1] - 3:20 approval [4] - 3:7, 6:12, 6:13, 7:13 approve [6] - 5:3, 5:4, 6:11, 6:19, 7:18, 8:2 approved [1] - 6:5 April [1] - 3:2 APRIL [1] - 1:11 Arising [1] - 4:8 arm's [1] - 7:20 Associates [1] - 1:18 attachment [2] - 6:16, 7:13 attend [1] - 3:24 attorneys' [3] - 6:1, 6:3, 7:22	Carlisle [1] - 8:25 CARLISLE [1] - 2:8 case [2] - 5:17, 5:25 CASE [1] - 8:19 Center [1] - 1:18 Certainly [3] - 3:5, 5:14, 7:4 certified [2] - 3:11, 3:23 Certify [1] - 8:21 Civil [1] - 1:3 claim [1] - 4:7 claims [4] - 3:10, 3:14, 4:1, 4:2 class [5] - 3:11, 3:20, 3:23, 3:24, 8:1 client [3] - 5:1, 5:7, 5:9 compensated [1] - 5:24 computer [1] - 1:24 computer-aided [1] - 1:24 concluded [1] - 8:20 conference [1] - 3:3 considered [1] - 3:15 context [1] - 5:4 CONTINUED [1] - 2:1 copies [1] - 4:10 copy [1] - 6:14 correct [6] - 3:18, 3:22, 4:23, 5:1, 8:10, 8:21 Correct [1] - 5:2 cost [2] - 6:4, 7:24 costs [1] - 6:4 COURT [29] - 1:1, 2:8, 3:3, 3:16, 3:19, 4:2, 4:5, 4:8, 4:13, 4:17, 4:19, 4:21, 4:24, 5:3, 5:7, 5:11, 5:13, 6:17, 6:20, 6:23, 7:1, 7:5, 7:8, 7:17, 7:25, 8:4, 8:6, 8:12, 8:18 Court [7] - 2:8, 3:6, 5:10, 6:11, 6:13, 6:18, 8:25 Court's [2] - 6:9, 6:12 crafting [1] - 6:8 credit [1] - 5:15	D damages [1] - 5:23 Date [1] - 8:25 DEFENDANTS [1] - 2:3 Defendants [1] - 6:18 defendants [2] - 3:13, 4:2 defendants' [1] - 3:13 difference [1] - 5:19 different [1] - 4:9 dispute [3] - 4:25, 5:11, 5:12 disputed [1] - 7:21 District [1] - 2:8 DISTRICT [3] - 1:1, 1:1, 1:14 DIVISION [1] - 1:2	G Given [1] - 7:25 GREGORY [1] - 2:4 guidance [2] - 5:10, 6:9
1				H Honor [15] - 3:5, 3:22, 4:4, 4:10, 4:20, 5:2, 5:12, 5:14, 6:4, 6:22, 6:25, 7:11, 8:3, 8:5, 8:16 HONORABLE [1] - 1:13 Horne [1] - 2:4 HOU [1] - 1:10 HOUSTON [2] - 1:2, 1:11 Houston [3] - 1:20, 2:6, 2:9 hundred [1] - 5:19
2			E Ebanks [1] - 2:4 eight [1] - 6:7 employment [4] - 4:8, 4:11, 4:21, 4:25 entitled [1] - 8:22 essentially [1] - 5:18 exception [1] - 3:8 excused [1] - 8:15 exhibit [1] - 7:15 experiences [1] - 3:23 extend [1] - 3:20	I identical [1] - 3:6 in's [1] - 6:5 including [2] - 5:16, 7:23 incurred [2] - 6:1, 6:4 Individually [1] - 1:4 individuals [1] - 5:16 interest [2] - 7:19, 8:14 issue [1] - 6:10 item [1] - 3:8
4			F facts [1] - 7:9 fair [1] - 7:19 faith [1] - 7:21 fees [3] - 6:1, 6:3, 7:22 file [6] - 6:12, 7:2, 7:5, 7:6, 7:8, 8:10 filed [5] - 6:15, 7:1, 7:11, 7:12, 7:14 filing [2] - 6:23, 8:7 firm [1] - 6:4 FLOWERS [1] - 1:3 FLSA [3] - 3:10, 4:1, 5:4 Following [1] - 5:17 following [1] - 6:12 FOR [2] - 1:17, 2:3	J JOHN [1] - 1:11 joint [4] - 3:6, 6:8, 6:13, 7:12 JUDGE [1] - 1:14 judgment [2] - 8:12, 8:17
5				
6				
7	B			
8				
8016 [1] - 2:9				

K	5:14, 6:22, 6:25, 7:4, 7:7, 7:11, 7:23, 8:3, 8:5, 8:10, 8:16	Proceedings [2] - 1:24, 8:20 produced [1] - 1:24 proposed [1] - 4:6 provision [1] - 6:23	settlements [1] - 3:7 SHARON [1] - 1:3 short [2] - 3:9, 8:9 shortly [1] - 8:11 shows [1] - 7:9 sign [1] - 8:16 signed [1] - 8:17 signing [2] - 8:8, 8:12 Similarly [1] - 1:5 Situated [1] - 1:5 SOUTHERN [1] - 1:1 specific [1] - 7:3 standard [1] - 4:11 STATES [2] - 1:1, 1:14 Steaks [1] - 1:11 stenography [1] - 1:24 STEPHANIE [1] - 2:8 Stephanie [1] - 8:25 Street [1] - 1:19 Suite [3] - 1:19, 2:5, 2:9	U
L	language [3] - 3:9, 4:6, 4:20 last [1] - 6:10 law [1] - 4:11 lawsuit [3] - 3:12, 4:14, 4:16 LEE [1] - 1:13 length [1] - 7:20 liquidated [1] - 5:23 Lisa [2] - 8:14, 8:18 LLC [1] - 1:10 LLP [1] - 2:4 looking [1] - 4:5 Louisiana [1] - 1:19 Lyric [1] - 1:18	names [2] - 7:2, 7:15 NARF [1] - 1:10 need [5] - 5:7, 7:5, 7:8, 8:4, 8:16 Nothing [1] - 8:5	reached [1] - 7:20 really [1] - 4:24 reasonable [2] - 7:20, 8:1 receiving [2] - 5:19, 5:22 record [1] - 8:22 recorded [1] - 1:24 recovered [1] - 8:1 redacted [2] - 6:15, 7:14 relating [1] - 4:21 relationship [1] - 7:25 release [5] - 3:8, 3:10, 3:14, 4:11, 8:8 released [2] - 3:12, 4:3 Reporter [1] - 8:25 REPORTER [1] - 2:8 representative [1] - 3:24 represented [1] - 5:15 requires [1] - 4:24 requiring [1] - 3:14 resolved [3] - 5:18, 6:1, 6:10 respect [1] - 5:1 result [1] - 6:2 ROSENTHAL [1] - 1:13 ROTA [5] - 2:4, 5:2, 5:6, 5:9, 6:18 Rota [1] - 2:4 RPR [1] - 8:25 Rule [1] - 3:20 Rusk [1] - 2:9	U.S [1] - 2:8 under [7] - 6:15, 6:23, 7:1, 7:2, 7:6, 7:14, 7:15 UNITED [2] - 1:1, 1:14 up [1] - 4:25
M	MANAGER [1] - 8:19 McKinney [1] - 2:5 mechanical [1] - 1:24 mediation [1] - 5:17 mediations [1] - 3:25 MELISSA [1] - 1:17 might [1] - 5:1 minimum [1] - 5:21 Mo's [1] - 1:10 months [1] - 6:7 MOORE [23] - 1:17, 3:5, 3:18, 3:22, 4:4, 4:6, 4:9, 4:15, 4:18, 4:20, 4:23, 5:12, 5:14, 6:22, 6:25, 7:4, 7:7, 7:11, 7:23, 8:3, 8:5, 8:10, 8:16 Moore [1] - 1:18 Moos [1] - 2:4 motion [2] - 6:13, 7:13 motions [1] - 3:7 MR [5] - 2:4, 5:2, 5:6, 5:9, 6:18 MS [24] - 1:17, 2:8, 3:5, 3:18, 3:22, 4:4, 4:6, 4:9, 4:15, 4:18, 4:20, 4:23, 5:12,	Page [3] - 4:5, 4:6, 8:8 paid [2] - 5:20, 6:6 Paragraph [3] - 3:15, 4:10, 8:9 paragraph [1] - 4:10 particular [1] - 7:14 parties [4] - 3:17, 5:17, 6:8, 7:19 past [3] - 3:23, 6:14, 7:11 people [1] - 3:16 percent [3] - 5:19, 5:23, 8:19 period [2] - 5:24, 6:7 Place [1] - 1:10 plaintiff [1] - 5:16 plaintiffs [3] - 3:6, 3:11, 4:3 PLAINTIFFS [1] - 1:17 pled [1] - 5:14 position [1] - 3:13 possible [1] - 4:7 presented [1] - 3:6 PROCEEDINGS [1] - 1:13 proceedings [1] - 8:22	seal [8] - 6:15, 6:24, 7:1, 7:2, 7:6, 7:8, 7:14, 7:15 settle [1] - 4:1 settlement [14] - 3:3, 3:24, 5:5, 5:18, 6:2, 6:5, 6:9, 6:12, 6:13, 6:14, 6:19, 7:9, 7:13, 7:18	U.S [1] - 2:8 under [7] - 6:15, 6:23, 7:1, 7:2, 7:6, 7:14, 7:15 UNITED [2] - 1:1, 1:14 up [1] - 4:25
P				V
				VASSALLO [1] - 1:11 version [6] - 6:15, 7:2, 7:5, 7:6, 7:9, 7:14 version.. [1] - 4:19 vigorously [1] - 7:21 violation [1] - 5:15 VS [1] - 1:7
				W
				wage [1] - 5:21 willing [2] - 5:9, 6:3
				Y
				year [1] - 5:24